established canons for the construction of the charters of municipal as well as of private corporations.

We are, therefore, of the opinion that the court erred in sustaining appellees' demurrer, and the judgment is reversed, and cause remanded with directions to overrule the demurrer, and for further proper proceedings.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF KANSAS.[2]
COURT OF APPEALS OF MARYLAND.[3]
SUPREME COURT OF MICHIGAN.[4]
SUPREME COURT OF OHIO.[5]
SUPREME COURT OF WISCONSIN.[6]

ATTACHMENT. See *Receiver.*

Money paid into court and deposited in bank to the credit of the cause is not liable to the process of attachment: *Mattingly* v. *Grimes*, 48 Md.

ATTORNEY. See *Libel.*

Admission of Attorneys to practice in the State Courts—Fourteenth Amendment.—The privilege of admission as an attorney in the courts of Maryland, is limited to *white male citizens* above the age of twenty-one years: *In re Charles Taylor*, 48 Md.

The privilege of admission to the office of an attorney is not a right or immunity belonging to the citizen, within the meaning of the fourteenth amendment of the constitution of the United States, but is governed and regulated by the legislature, who may prescribe the qualifications required and designate the class of persons who may be admitted: *Id.*

BILL OF EXCEPTIONS.

Trial by Judge without Jury.—A bill of exceptions cannot be used to bring up the whole testimony for review when a case has been tried by the court, any more than when there has been a trial by jury: *Bitts* v. *Mogridge*, S. C. U. S., Oct. Term 1878.

BILLS AND NOTES.

Notice to Accommodation Endorser.—Notice of the non-payment of

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[1] Prepared expressly for the American Law Register, from the original opinions filed during October Term 1878. The cases will probably be reported in 7 or 8 Otto.

[2] From Hon. W. C. Webb, Reporter; to appear in 21 Kansas Reports.

[3] From J. Shaaf Stockett, Esq., Reporter; to appear in 48 Md. Reports.

[4] From H. A. Chaney, Esq., Reporter; to appear in 40 Michigan Reports.

[5] From E. L. DeWitt, Esq., Reporter; to appear in 34 Ohio State Reports.

[6] From Hon. O. M. Conover, Reporter; to appear in 46 Wisconsin Reports.

a negotiable promissory note must be given to an accommodation endorser, as well as to any other endorser, or he will be discharged from all liability on such note. Therefore, where G. executed a note to A., and A. endorsed the same merely for the accommodation of G., and G. then received the original and only consideration for the note from B., who was the first and only holder of the note for value, and said note was not paid when it became due, and no notice of its dishonor was given to A.; *Held*, That A. was discharged from all liability on the note: *Braley* v. *Buchanan*, 21 Kans.

Renewal—National Bank—Usury.—Where a national bank makes to one of its directors a loan of money, which in amount and in the rate of interest is in contravention of the National Banking Act, the borrower is not estopped to defend against a recovery of interest: *Bank of Cadiz* v. *Slemmons*, 34 Ohio St.

If a payee take from the maker a promissory note, and at the same time surrender the maker's note of an earlier date given for a loan of money, the facts, and not merely what the payee called or considered the transaction, will determine whether it was a renewal or payment of the original loan: *Id.*

In rendering judgment on a promissory note given to a national bank in renewal, into which note illegal interest on the original note was incorporated, the whole interest on both notes will be disallowed: *Id.*

Payments made generally on a promissory note to a national bank, which note embraces illegal interest, will be applied in satisfaction of the principal: *Id.*

Broker.

Commissions from both sides.—The same agent was retained by different persons on commission to negotiate sales or exchanges of their property, and he brought about an exchange between two of them, neither knowing that he was acting for the other. *Held*, contrary to public policy to allow him a right of action against both to recover his commissions, even though he had acted in good faith: *Scribner* v. *Collar*, 40 Mich.

Chattel Mortgage. See *Insurance.*

When void for uncertainty.—A mortgage upon a stated quantity of mixed logs in the drive is void for uncertainty as against third parties who have acquired rights, if it does not furnish the data for separating the mortgaged logs from the mass: *Richardson* v. *Alpena Lumber Co.*, 40 Mich.

Conflict of Laws. See *Slander.*

Constitutional Law.

Obligation of Contracts—Divorce.—The provision of the constitution prohibiting states from passing laws impairing the obligation of contracts has never been understood to embrace other contracts than those which respect property or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate upon the subject of divorces. Those acts enable some tribunal not to impair a marriage

contract, but to liberate one of the parties because it has been broken by the other: *Hunt* v. *Hunt*, S. C. U. S., Oct Term 1878

Ex Post Facto Law.—An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed, or which imposes additional punishment to that then prescribed: *Burgess* v. *Salmon et al.*, S. C. U. S., Oct. Term 1878.

The *ex post facto* effect of a law cannot be evaded by giving a civil form to that which is essentially criminal: *Id.*

CONTRACT.

Substitution of Legal for Illegal form of Indebtedness.—Where the city of Little Rock received and expended money for legitimate purposes, and issued therefor notes in the form of bank bills, a form of indebtedness prohibited by the statutes of the state, but afterwards cancelled these bank notes and delivered in lieu thereof obligations in the form of bonds, to which there was no legal objection: *Held*, that this new form of obligation was valid and collectable: *City of Little Rock* v. *Merchants' National Bank*, S. C. U. S., Oct. Term 1878.

Where the consideration of a contract declared void by statute is morally good, a repeal of the statute will validate the contract: *Id.*

COPYRIGHT. See *Execution.*

COUNTY.

Expenditure of County Funds for purposes outside of authority of the Commissioners—Injunction.—Where a board of county commissioners have executed on behalf of a county a contract for the erection of permanent county buildings, which is void for want of power on the part of the commissioners, as officers of the county, to make, and are carrying out the terms of the contract at the cost of the county, and using the general revenue fund to pay for the work done thereunder. *Held*, that they may be restrained by injunction from erecting said building, and from drawing any warrants on the county treasurer therefor: *State ex rel. Reed* v. *Board of County Commissioners of Marion County*, 21 Kansas.

CRIMINAL LAW.

Defective Indictment—Offence created by Statute—Effect of a Trial under a defective Indictment.—An indictment, under sect. 163 of art. 30 of the code, charging a party with receiving, well knowing them to be stolen, "four pieces of printed paper commonly called United States 5-20 bonds of the issue of the year 1865, each of the value of $1000 current money," is fatally defective in that it does not charge in distinct and positive terms that the "four pieces of printed paper" were bonds or certificates of indebtedness issued or "granted by or under the authority of the United States:" *Kearney* v. *The State*, 48 Md.

The want of a direct allegation in an indictment of anything material in the description of the substance, nature or manner of the crime cannot be supplied by intendment. It is an essential requisite in every indictment that it should allege all matters material to constitute the particular crime charged, with such positiveness and distinctness, as not to need the aid of intendment or implication: *Id.*

In an indictment for an offence created by statute, it is sufficient to describe the offence in the words of the statute, and where the words of the statute are descriptive of the offence, the indictment should follow (in substance at least) the language of the statute, and expressly charge the described offence on the defendant, or it will be defective. It is necessary that the defendant should be brought within all the material words of the statute, and nothing can be taken by intendment: *Id.*

A party not having been tried on a valid indictment has not been put in jeopardy, and may on being discharged be re-arrested, re-indicted and tried again: *Id.*

Evidence—Impeaching Character of Witness.—Where a convict, who has been in the penitentiary two years, is taken therefrom to testify as a witness, and does so testify, it is competent for the adverse party to prove that his reputation for truth and veracity was bad, at the time of and previous to his conviction, at the place where he then resided: *Hamilton* v. *The State*, 34 Ohio St.

On the trial of a criminal case, it is error to permit the state to prove by cross-examination of a witness called by the defendant, that the accused stands indicted for other offences: *Id.*

Married Woman—Coercion.—The presumption that a married woman who commits a criminal act in the presence of her husband acts under his coercion, is only *prima facie;* and when it is shown that she acted voluntarily, and not by coercion, she is liable to a prosecution: *Tabler* v. *The State*, 34 Ohio St.

DAMAGES. See *Libel.*

DEBTOR AND CREDITOR. See *Execution.*

DIVORCE. See *Constitutional Law.*

EASEMENT.

Appropriation by City for use of Street.—A municipal corporation is authorized to appropriate an easement in land abutting on a street, for the purpose of making a sloping fill in order to afford lateral support to the street: *Dodson* v. *The City of Cincinnati*, 34 Ohio St.

Such appropriation does not divest the owner of his dominion over the property subject to the easement. He may still use it for all purposes not inconsistent with the special purpose of furnishing the necessary support to the street: *Id.*

Where such an easement has been appropriated, the landowner is entitled to be compensated for all the rights of which he has been deprived; but where he still retains substantial rights in the property, he is not entitled to be allowed the value of the land in fee simple: *Id.*

EQUITY.

Enjoining Proceedings in Equity.—One suit in equity will not lie to enjoin the execution of process issued in another such suit, whether the second suit be brought in the same or another court, by a party or by a stranger to the first: *Endter* v. *Lennon*, 46 Wis.

ERRORS AND APPEALS. See *Mandamus.*

When Judgment not reversed.—Where a cause has been tried upon the merits, and submitted to the jury upon evidence, received without objection, tending to show a cause of action in plaintiff's favor, and under instructions to which no exception was taken, a judgment for the plaintiff on a general verdict in his favor will not be reversed on the ground that the complaint omits some averment essential to the cause of action: *Vassau* v. *Thompson*, 46 Wis.

RYAN, C. J., and LYON, J., dissent from the judgment, holding that the complaint, which was insufficient, might have been amended from the evidence, and under the charge, in *either of two different ways* so as to state two different causes of action; and that in such a case judgment for plaintiff on a general verdict should not be upheld: *Id.*

EVIDENCE. See *Insanity; Libel; Telegraph.*

Offer of Compromise.—Where there has been an offer by a party, either verbal or in writing, expressly stated to be made without prejudice, or where from the nature of the offer and the circumstances under which it was made, it may be reasonably inferred that the offer was but the expression of a willingness to pay money, allow credit, deliver property, or do some other thing, by way of compromise, to buy peace and prevent litigation, such offer is not evidence as an admission against the party making it; but if the admission of the existence of *a fact* be made, unless expressly without prejudice, or as a mere concession in order to induce a compromise, there is no rule of law which would exclude such admission as against the party making it: *Calvert* v. *Friebus*, 48 Md.

Tax-Sale Deed.—Statutes which make a tax-sale deed *prima facie* evidence of the *regularity* of the sale, do not relieve a purchaser from the burden of showing that the proceedings anterior and necessary to the power to make the sale actually took place. But the Act of Congress of 1863 declares that the commissioners' certificate shall be *prima facie* evidence not merely of the regularity of the sale but also of its *validity* and of the *title* of the purchaser, and it enacts that it shall only be affected as evidence of the regularity and *validity* of the sale by establishing the fact that the property was not subject to taxes, or that the taxes had been paid previous to the sale, or that the property had been redeemed: *De Treville* v. *Smalls*, S. C. U. S., Oct. Term 1878.

This Act of Congress contemplates a certificate of sale in cases where the United States becomes the purchaser as fully as where the purchase is made by another. *Id.*

Where Deposition destroyed by Fire, admissibility of Evidence as to Substance.—Where depositions were destroyed by the Chicago fire between the first and second trial of an action, and the witnesses who made the depositions at the first trial had since died, *held*, that testimony of other witnesses as to the substance of these depositions was admissible at the second or new trial: *Ruch* v. *City of Rock Island*, S. C. U. S., Oct. Term 1878.

The living witness may use his notes taken contemporaneously of the testimony to be proved in order to refresh his recollection, and thus aided he may testify to what he remembers, or if he can testify positively to the accuracy of his notes, they may be put in evidence: *Id.*

EXECUTION.

Unpublished Manuscripts not Leviable Property.—Unpublished manuscripts are not leviable property. So held of a set of abstract books: *Dart* v. *Woodhouse*, 40 Mich.

The right of an owner of manuscript to publish it or not is an incorporeal property right belonging to him personally, independent of locality and not to be interfered with: *Id.*

The copyright of a published work cannot be reached by the owner's creditors unless by statutory authority. *Id.*

Creditors cannot complain of the disposal of property that they cannot reach: *Id.*

EXTRADITION.

Between the States—U. S. Statutes—Statutes of the States.—The certificate of authentication provided for in sect. 5278 of the United States Revised Statutes (1027) is not required to be in any particular form, and where the language employed by the demanding governor in the requisition shows the copy of an indictment annexed thereto to be authentic, it is sufficient: *Ex parte Sheldon*, 34 Ohio St.

It is no ground for discharging a fugitive from justice on habeas corpus that the indictment, after charging embezzlement, by way of conclusion in the same count, also avers that "so" the defendant committed larceny: *Id.*

Where from the authenticated copy of the indictment annexed to the requisition it appears that the fugitive stands charged in the demanding state with embezzlement, the printed statutes of such state, purporting to be published by its authority, may be received to show that embezzlement is made a crime by the laws of that state: *Id.*

After an alleged fugitive from justice has been arrested on an extradition warrant, he will not be discharged on the ground that there was no evidence before the executive issuing the warrant, showing that the fugitive had fled from the demanding state to avoid prosecution: *Id.*

FALSE IMPRISONMENT. See *Insanity.*

FORMER ADJUDICATION.

Who bound by—Assignee of Mortgage pendente lite.—A party who is made defendant to a foreclosure suit under the allegation "that he has or claims some interest in or lien upon the said mortgaged premises, which interest or lien accrued subsequently to and is inferior to that of the said plaintiff," and against whom the judgment is taken by default "that he and all persons claiming under him since the commencement of the action, are for ever barred and foreclosed of all right and equity of redemption in the said mortgaged premises, and in each and every part thereof," is barred by such decree from maintaining a suit to foreclose a mortgage alleged by said defendant to be a prior one on the same premises; and *held*, that the assignee of the said defendant mortgagee of the mortgage which is non-negotiable, and to which he obtained title *pendente lite*, is also barred and foreclosed by the same judgment: *Case* v. *Bartholow*, 21 Kans.

As to whom Judgment is a bar.—A judgment is no bar to a subse-

quent action not between the same parties or their representatives or privies: *Tierney* v. *Abbott*, 46 Wis.

Plaintiff obtained a judgment for rent against C. and B. & Co. jointly, but there was no such firm as B. & Co., that being a misnomer for A. & Co.; and satisfaction of the judgment out of the property of A. & Co. was thus defeated, and it remained unsatisfied. Afterwards this action was brought for the same rent against A. & Co., the complaint alleging that they rented the property through C. *as their agent. Held*, that plaintiff is not estopped by the former action and judgment from maintaining this action against A. & Co. as sole principals: *Id.*

GARNISHEE. See *Receiver.*

GIFT. See *Husband and Wife.*

HIGHWAY.

Taking Land for—Assessment of Damages.—A jury, in assessing the damages sustained by a landowner by reason of the establishment of a public road across his land, cannot take into consideration for the purpose of reducing his damages, *all conveniences and benefits* accruing to him by reason of the location of the road, but only such conveniences and benefits as are direct and special as to him and his land, and such as are the direct, certain and proximate result of the establishment of the road. They cannot take into consideration such conveniences and benefits as are received in common by the whole community: *Roberts* v. *Board of Commissioners of Brown county*, 21 Kans.

Increased value of the land may often be taken into consideration in fixing the amount of the damages sustained by the owner thereof in laying out and establishing roads. But this can be done only where such increased value arises from some direct, special and proximate cause, such as the draining of the land, or building bridges across streams running through the land, or making some other valuable improvement on or near the land, by means of which the owner will be enabled to enjoy his land with greater advantage. Increased value, founded merely upon increased facilities for travel and transportation by the public in general, is not the kind of increased value which may be taken into consideration for the purpose of reducing the damages to be awarded to the land owner: *Id.*

HUSBAND AND WIFE. See *Criminal Law; Insurance.*

Gift from Husband to Wife—Change of Possession.—In determining whether a gift has been made, the question of change of possession must be considered in connection with the other facts in the case; as where it passes between married persons living together. Open and visible change of possession can hardly be required to establish the fact of a gift from a husband to his wife when they are living together: *Davis* v. *Zimmerman*, 40 Mich.

A wife claimed ownership of a horse as given to her by her husband, and testified that after the gift was made she went to the stable where the horse was kept and gave directions respecting its keeping, and that she afterwards controlled it. *Held*, admissible as *res gestæ* and as tending to show that possession was delivered: *Id.*

Where a woman claims property as a gift from her husband, the only

question is whether she establishes her right by a fair preponderance of evidence. But it is proper to consider the circumstances of the relation and the facility with which fraud may be perpetrated under its protection: *Id.*

INJUNCTION. See *Equity*.

INNKEEPER.

Liability of—Statutory Requirements.—Where a safe for the keeping of articles is provided by a hotel-keeper, and the notices given as required by statute, a loser failing to take the benefit of the protection given him must bear his own loss. *Elcox et al.* v. *Hill*, S. C. U. S., Oct. Term 1878.

Where the loss is occasioned by the personal negligence of the guest himself, the liability of the innkeeper does not exist: *Id.*

INSANITY.

False Imprisonment in an Insane Asylum.—In an action for false imprisonment brought by a patient in an insane asylum against the superintendent, the broadest latitude should be allowed in showing the jury what the patient said and did and how she appeared when there, as facts bearing on the question of her sanity: *Van Dusen* v. *Newcomer*, 40 Mich.

An expert cannot be asked for a conclusion upon facts not stated; as where a physician is asked his opinion as to what produced the condition of a patient as he observed it: *Id.*

One cannot lawfully be placed or detained in an insane asylum against his will, unless actually insane: *Id.*

The confinement of a person dangerously insane is always justifiable. *Id.*

Officers having *quasi* judicial powers are not liable for injuries resulting from acts done understandingly and in good faith within the limits of an authority expressly granted to them: *Id.*

Whether the superintendent of an asylum is liable for detaining a sane person whom in good faith he believes to be insane, *query:* COOLEY, J., and CAMPBELL, C. J., holding that he is; MARSTON and GRAVES, JJ., that he is not: *Id.*

INSURANCE.

Forfeiture—Insurable Interest—Mortgage of Chattels.—When a forfeiture of an insurance policy is alleged on merely technical grounds, not going to the risk, the contract of insurance will be upheld, if it can be without violating any principle of law: *Appleton Iron Co.* v. *British American Assurance Co.*, 46 Wis.

Both mortgagor and mortgagee of chattels have insurable interests therein; and a provision in a policy of insurance issued to the mortgagor, by which any loss is payable to the mortgagee as his interest may appear, is valid: *Id.*

Where the interest of mortgagees in insured chattels exceeded the insurance, and, by the terms of the policy (taken by the mortgagor), the amount of any loss would become payable to the mortgagees, the legal title to the policy, as well as to the chattels, was in the mortgagees, and the mortgagor could not (by a general assignment in bankruptcy or otherwise) transfer the title to either, so as to give effect to a clause in

the policy which provided that if any change should take place in the title to the chattels, by legal process, judicial decree or voluntary transfer or conveyance, or if the policy should be assigned before a loss without the insurer's consent endorsed thereon, it should be void: *Id.*

Whether such a provision for forfeiture of insurance as that above stated is not void as against public policy, *quære.*

Upon such forfeiture being incurred, the policy is voidable only, at the election of the insurer; and the forfeiture may be waived by laches of the insurer misleading persons interested in the policy to their prejudice. And in this case, if, by any act of the mortgagor, a forfeiture had been incurred on which the insurer meant to rely, good faith would have required it to notify the mortgagees, to give them an opportunity to protect themselves by other insurance: *Id.*

Forfeiture of Policy for Misrepresentation of Title.—A policy contained a clause of forfeiture for the omission to state any material fact, and made the application of the insured a warranty. *Held*, that it was avoided by the statement of the insured that his title to the property was absolute, when in fact it was held by him and his wife under the same deed: *Ætna Ins. Co.* v. *Resh*, 40 Mich.

The existence of any substantial encumbrance upon property is a material fact in insurance, whether the statements of the insured are made warranties or not: *Id.*

Where property is granted to a husband and wife by the same deed, the husband is neither a tenant in common nor an ordinary joint tenant; he has no right to an undivided half of the property, and if he dies his estate goes to his wife by survivorship: *Id.*

Land Damages. See *Easement; Highway.*

Landlord and Tenant.

Lease, construction of—Rights of the United States as Lessee.—Leases, like deeds or other written instruments, must receive a reasonable construction, as derived from the language employed, without the aid of extrinsic evidence beyond what may be necessary to identify the premises and to disclose the circumstances surrounding the transaction when the instrument was executed. *Bradley* v. *The United States*, S. C. U. S., Oct. Term 1878.

Where the United States has leased property, public officers, having no funds in the treasury and being without authority to bind the United States, can only agree to pay the stipulated rental, provided the money is appropriated by Congress, and if the lessor, voluntarily and without any misrepresentation or deception, enters into a lease on those terms, he must rely upon the justice of Congress: *Id.*

Where the lessor in such a case has been seasonably notified that he would not be paid for the third year any greater rent than the sum appropriated for the purpose: *Held*, that he could only recover such appropriated sums: *Id.*

Libel.

Notice of Justification— Variance.—Where the defendant in a libel suit gives notice of a general justification without serving particulars,

he must prove the truth of the libellous statements precisely as charged in the declaration. *Bailey* v. *Kalamazoo Publishing Co.*, 40 Mich.

Courts take judicial notice of the meaning of current phrases which every body else understands: *Id.*

A "pettifogging shyster" is an unscrupulous practitioner who disgraces his profession by doing mean work, and resorts to sharp practice to do it. General reputation is sufficient to justify the charge that a lawyer is a pettifogging shyster: *Id.*

Evidence to justify statements published after the commencement of a suit for libel is not admissible: *Id.*

It is not error to allow the defendant in a libel suit to show on what ground he based his information: *Id.*

Damages for a libel upon a candidate for public office are reduced to a minimum if the libel results from an honest mistake made in an honest effort to enlighten the public as to his character: *Id.*

Where a libellous charge is made against a candidate, and there is only a technical variance between the charge and its justification, proof that the party making it honestly believed it, should be received to show that there was no wrong intent: *Id.*

Mandamus.

Cannot be used to perform the office of an appeal or writ of error. *Ex parte Schwab*, S. C. U. S., Oct. Term 1875.

Where an application is made for the allowance of an injunction, it becomes the duty of the court to determine whether the case is one in which that power can be exercised. The question arises in the regular progress of the cause, and if decided wrong, an error is committed which, like other errors, may be corrected on appeal after final decree below, and cannot be corrected by mandamus: *Id.*

Mortgage. See *Chattel Mortgage.*

Municipal Corporations. See *Contract; Easement.*

National Bank. See *Bills and Notes.*

Negligence.

Burden of Proof—Risk incident to Employment.—One who brings an action as for an injury caused by defendant's negligence, has the burden of proving such negligence: *Steffen* v. *C. & N. W. Railway Co.*, 46 Wis.

In such an action, where, upon plaintiff's evidence, the accident appeared unaccountable, and defendant's evidence, so far as it accounted therefor, showed that it arose from *an occult risk incident to the employment*, or that, if there was negligence, it was that of the plaintiff, it was error to submit the question of defendant's negligence to the jury: *Id.*

New Trial.

Second application after refusal of first—Only a Party can ask for.—After a new trial has been absolutely denied, a second motion for the same relief, founded upon substantially the same grounds, cannot properly be granted: *Rogers* v. *Hoenig*, 46 Wis.

As a general rule, no one but a *party* to the suit can be heard to ask for a new trial: *Id.*

Plaintiff, as owner, recovered possession of goods from defendant, who had taken them as agent for one M.; and after defendant had paid the judgment for damages and costs, and had failed to obtain, on demand, reimbursement from M. of the amount so paid, and for time and money spent in the litigation, M., who was insolvent and had not indemnified defendant against the expense of further litigation, nor ever applied to be made a defendant, obtained an order for a new trial in defendant's name, but against his will: *Held,* that the order was improperly granted: *Id.*

Officer.

Right to Salary.—A legally elected officer, duly qualified and standing ready to perform the duties of his office, is entitled to the salary if it has not been paid, even though debarred from the performance of his duties by an intruder acting in good faith: *Comstock* v. *City of Grand Rapids*, 40 Mich.

Partnership.

Note given by one Partner after Dissolution.—As between a co-partnership and a creditor thereof, a note given in the firm name, without authority, by one partner, after dissolution, for a debt of the firm, the parties to the note intending to bind, and believing the note was binding on the firm, will not extinguish the firm debt: *Gardner* v. *Conn*, 34 Ohio St.

As between the partners themselves, such transaction will not discharge the non-consenting partner from liability to make contribution to the partner paying the debt: *Id.*

Payment.

What amounts to.—A debtor delivered a horse to his creditor to sell it and apply the proceeds in payment of the debt. The creditor exchanged the horse for other property, and the amount to be applied was disputed. *Held,* that notwithstanding the dispute the transaction amounted to a payment, instead of a mere basis of set-off against plaintiff's claim: *Strong* v. *Kennedy*, 40 Mich.

Receiver.

Cannot be Garnisheed without leave.—The receiver's custody is that of the court which appointed him, and he cannot be sued or garnisheed without leave of the court: *People ex rel. Tremper* v. *Brooks*, 40 Mich.

Road. See *Highway.*

Slander.

Gravamen only need be Proved—Lex loci.—In actions for slander, it is sufficient if the *gravamen* of the charge, as laid, be proven: *Dufresne* v. *Weise*, 46 Wis.

Where, therefore, the slanderous words charged imputed to the female plaintiff a crime, and defendant's answer, while denying that he spoke the precise words charged, admitted that he spoke "other words of similar import," and justified by alleging that plaintiff did in fact commit the crime thus imputed to her, and the proof was that defendant

used words of similar import to those charged, though not quite the exact words, the variance was immaterial: *Id.*

Words falsely charging an act criminal by the law of the place of the act are slanderous *per se*, whether or not such act would have been criminal by the law of the place of the speaking. *Id.*

TAXATION.

Exemption from.—The right of taxation is never to be presumed to be surrendered by the sovereign power, and such surrender is never made unless it be the result of express terms or necessary inference. *County Commissioners* v. *Sisters of Charity*, 48 Md.

Exemption being a surrender of the power of taxation in favor of particular persons or property, is subject to the same principle, and, therefore, never to be presumed: *Id.*

Exemption is a special privilege, in conflict with a universal obligation, conferred only by positive law, and not founded in the character of the person or property, except in a few specified cases; and no general principle can be found in the constitution or laws of the state, which releases charitable or benevolent corporations from the universal obligation to contribute to the support of the government, in proportion to their actual worth in real or personal property: *Id.*

TELEGRAPH.

Production of Message in Court.—The statute (sect. 93, ch. 137, R. S. 1858) empowers the court in an action pending before it, to order either party to give the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers or documents in his possession or under his control, containing evidence relating to the merits of the action or defence. In an action for damages for a mistake in transmitting a telegraph from Ogden, Utah T., *via* Omaha to Milwaukee, where it was delivered by defendant to the N. W. Telegraph Co. to be transmitted to Madison, the complaint alleged, upon information and belief, that the mistake charged was made by defendant's agents at Chicago who reduced it to writing there; and, upon plaintiff's application with due notice, the court ordered defendant, within a specified time, to *deposit with the clerk of the court* the original message mentioned in the complaint, in the condition in which it was received by it for transmission; the original of the same as received and written down in its office at Chicago; and the original as received and written down in its office at Milwaukee, and delivered to the N. W. Telegraph Co. for transmission to Madison—each verified by the oath of some competent agent of the company; and in case of its inability to produce any one or more of such originals, to produce verified letter-press copies thereof; and that the papers should *remain in the custody of said clerk two days* for plaintiff's use and inspection and to enable him to take copies: *Held*, that the order was within the discretion of the court. *Phelps* v. *Atlantic and Pacific Telegraph Co.*, 46 Wis.

TENDER.

Objections to—Keeping it good.—Objection to the mode of tender must be made at the time of the tender. *Browning* v. *Crouse*, 40 Mich.

A tender does not remain in force if the payment is refused and received back: *Id.*

A debtor compromised with his creditors, but as he paid the amount of the compromise irregularly, the creditors refused the last tender and sued for the whole debt. Defendant, having paid part and tendered the rest of the amount agreed on, recovered judgment. The tender, however had not been kept good. *Held*, that the recovery was wrong, and that plaintiffs should have recovered the amount owing under the compromise agreement, with costs: *Id.*

TRUSTEE.

Justice of Peace Depositing Funds in his Bank Account.—A justice of the peace received money, in his official capacity, in satisfaction of a judgment on his docket, and deposited the same in bank to his private account. The bank failed before the sum deposited was drawn therefrom. *Held*, That the justice was liable to the judgment-creditor for the amount so received and deposited: *Shaw* v. *Bauman*, 34 Ohio St.

UNITED STATES. See *Landlord and Tenant.*

UNITED STATES COURTS.

Supreme Court—Jurisdiction—Amount in Dispute.—While in the absence of anything to the contrary the prayer for judgment by the plaintiff, in his declaration or complaint, upon a demand for money only, or by the defendant in his counter claim or set-off, will be taken as indicating the amount in dispute, yet if the actual amount in dispute does otherwise appear in the record, reference may be had to that for the purpose of determining the jurisdiction of this court: *Gray* v. *Blanchard*, S. C. U. S., Oct. Term 1878.

Federal Question.—Where the case has been decided by the court below upon principles of general law alone, and it nowhere appears in the record that the plaintiff in error claims any title, right, privilege or immunity, under the constitution or authority of the United States, this court has no jurisdiction: *Bank of Old Dominion* v. *McVeigh*, S. C. U. S., Oct. Term 1878.

Jurisdiction of the Supreme Court—Federal Question.—It is not enough to give this court jurisdiction over the judgment of the state courts for a record to show that a federal question was argued or presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it actually was decided, or that the judgment as rendered could not have been given without deciding it.: *The State ex rel. Citizens' Bank* v. *Board of Liquidation of Louisiana*, S. C. U. S., Oct. Term 1878.

Federal Question.—Where the court below decided that as between vendor and vendee there could be a sale and delivery of cotton, so as to pass title to the vendee before the payment of the government tax assessed upon cotton, under the act of July 1st 1862. *Held*, that no federal question was involved and that the Supreme Court had no jurisdiction to review the case on error: *Carson* v. *Ober et al.*, S. C. U. S., Oct. Term 1878.

USURY. See *Bills and Notes.*